

On January 9, 2006 appellant, then a 50-year-old security screener, filed an occupational illness claim (Form CA-2) alleging that she sustained a lumbar injury causally related to repetitive lifting in her federal employment. The Office accepted a lumbar strain and lumbago as employment related.

On August 28, 2006 appellant returned to a light-duty position which provided that she was to monitor passengers for secondary screening and she could sit or stand as needed. She stopped working on September 14, 2006 and submitted claims for compensation (Form CA-7) for the periods September 2 to 4, 2006 and commencing September 14, 2006. In a letter dated October 25, 2006, appellant's representative alleged that appellant had to work outside her work restrictions as she was assigned to a different terminal than the terminal described in the light-duty job offer. The employing establishment responded in a December 18, 2006 letter contending that appellant did not have to work outside her physical restrictions as she could sit or stand based on her comfort level.

In a treatment note dated September 6, 2006, Dr. Kyle Scarborough, a family practitioner, reported that appellant had sat at a computer and was unable to continue or return to work the following day. He diagnosed back pain with bulging discs. In a report dated September 18, 2006, Dr. Benny Wang, a neurologist, provided results on examination and indicated that appellant was experiencing low back pain. He reported on September 21, 2006 that a magnetic resonance imaging (MRI) scan showed foraminal stenosis. In a report dated October 12, 2006, Dr. Bonaventure Ngu, an orthopedic surgeon, noted in his history that on September 14, 2006 appellant was at work and using a transcutaneous electric nerve stimulator (TENS) unit that somehow shocked her. Appellant quit working and she had not returned. Dr. Ngu stated that he did not believe appellant was a surgical candidate. By report dated November 1, 2006, Dr. Wang noted that appellant "does not think she can do her job at work." He stated that she should not do any lifting or pushing, but should be able to sit or stand if she could change positions. In an October 26, 2006 report, Dr. Wang stated that appellant's history was consistent with lumbosacral radiculopathy and lumbar strain. He stated that appellant was still "unable to do a lot of work."

The Office referred appellant for a second opinion examination with Dr. Bernard Albina, an orthopedic surgeon, regarding her current condition. Dr. Albina was asked for an opinion as to the extent and degree of any continuing employment-related residuals. In a report dated April 9, 2007, he indicated that appellant had a chronic lumbar strain with a functional overlay. Dr. Albina indicated that appellant had residuals of the employment injury and could work with a 10-pound lifting restriction.

By decision dated May 25, 2007, the Office denied disability compensation from September 2 to 4, 2006 and from September 14, 2006 to January 4, 2007.

LEGAL PRECEDENT

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.¹

¹ *Terry R. Hedman*, 38 ECAB 222 (1986).

The Office's procedures acknowledge that in claims for disability within 90 days of a return to work, the focus is generally on disability, not causal relationship, and a physician's statement on causal relationship may be sufficient on the issue even without medical rationale.² There are, however, situations where a rationalized medical opinion is still required, such as when the diagnosis is different from the accepted condition.³ Moreover, a claimant must provide probative evidence of disability for work, including evidence that "describes the duties which the employee cannot perform and the demonstrated objective medical findings that form the basis for renewed disability for work."⁴

ANALYSIS

It is appellant's burden of proof to establish that there was a change in the nature and extent of her employment-related condition that disabled her from performing the light-duty job to which she returned as of August 28, 2006. She claimed that from September 2 to 4, 2006 and from September 14, 2006 to January 4, 2007 she was disabled for the light-duty job due to her accepted employment injury. Appellant noted that her claim for compensation was made within 90 days of a return to work. The medical evidence in this case, however, is not sufficient to meet appellant's burden of proof in establishing disability for the periods claimed.

Dr. Wang diagnosed lumbar radiculopathy and referred to MRI scan findings such as facet hypertrophy or foraminal stenosis. These conditions were not accepted employment injuries. The record establishes that her claim was accepted for lumbar strain and lumbago. There must be a rationalized medical opinion on causal relationship with her employment. Neither Dr. Wang nor any physician of record provided a rationalized medical opinion on causal relationship with the employment injuries. In addition, there must be clear evidence of disability for the light-duty position during the periods claimed. The physician must be aware of the job duties being performed and provide medical findings to support disability for work. None of the physicians of record provided probative medical evidence on the issue of disability for work during the claimed periods. Dr. Wang indicated in a November 1, 2006 report that appellant could not lift or push, but could stand or sit as needed. The light-duty job did not require lifting or pushing, and allowed appellant to sit or stand. Dr. Ngu referred to an incident with a TENS units on September 14, 2006, without further explanation. The Board finds appellant did not meet her burden of proof to submit sufficient medical evidence to establish employment-related disability for September 2 to 4, 2006 or September 14, 2006 to January 4, 2007.⁵

Appellant also raised the allegation that the light-duty job was outside her work restrictions. The basis for this allegation was that she worked in a different airport terminal than she had anticipated. The employing establishment stated that the job allowed her to sit or stand as required. There is no probative evidence presented that appellant was required to work

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(6) (September 2003).

³ *Id.* at 2.1500.5(4).

⁴ *Id.* at 2.1500.6(b).

⁵ It is noted that, while the Office referred appellant to Dr. Albina for a second opinion examination on April 9, 2007, he was not asked nor did he provide an opinion as to an employment-related disability for the claimed periods.

outside her physical restrictions. The Board finds no evidence of a change in the nature and extent of the light-duty requirements entitling appellant to compensation for any period claimed.

CONCLUSION

Appellant did not submit sufficient evidence to establish an employment-related disability for the period September 2 to 4, 2006 or September 14, 2006 to January 4, 2007.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 25, 2007 is affirmed.

Issued: November 4, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board